

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANDRE THOMPSON, a single man; and
BRRYSON CHAPLIN, a single man,

Plaintiffs,

v.

CITY OF OLYMPIA, a local
government entity; and RYAN
DONALD and “JANE DOE” DONALD,
individually and the marital community
comprised thereof,

Defendants.

CASE NO. 3:18-cv-05267

ORDER ON MOTIONS IN
LIMINE

Plaintiff’s Motions in Limine:

1. Exclude reference to Officer Donald’s military service
DENIED
2. Exclude performance evaluations, promotions, nominations and commendations received
post May 21, 2015
DENIED
3. Evidence related to the filing of criminal charges against the plaintiffs arising out of the
incident at issue should be excluded under Rules 401, 402, and 403

DENIED with respect to the charges of assault against Donald, RESERVED with respect to other charges of theft and assault at the Safeway

4. Witnesses should be ordered to refer to the previous criminal trial as a “prior proceeding”

DENIED

5. Exclude any reference to the Review Board Findings/Conclusions that Officer Donald acted reasonably, nor was internally disciplined regarding the incident

DENIED

6. Exclude prior bad acts, including prior convictions, should be excluded:

A. Chaplin’s juvenile adjudications of Robbery and Theft in the 2nd Degree conviction

GRANTED

B. Chaplin’s Taking a Motor Vehicle Without Permission conviction

GRANTED

C. Chaplin’s Assault and Theft convictions from May 20, 2015

RESERVED

D. Safeway videos of incidents on night of May 20, 2015

DENIED

E. All testimony, documents, arguments that Plaintiffs were convicted of Assault in the 3rd Degree against Officer Donald

DENIED

7. The toxicology report showing concentration of blood alcohol level and presence of marijuana/THC should be excluded

DENIED

1 8. Exclude evidence of Plaintiffs' history of drug experimentation

2 GRANTED

3 9. Exclude Safeway employee, Jason Gray, from testifying that he heard Chaplin yelling
4 something at Gray and Brown, then picking up the skateboard and "huck[ing] it at
5 [them]"

6 RESERVED

7 10. Defendants' Expert Kenton Wong should be prohibited from speculating that drugs and
8 alcohol may have precipitated the incident

9 GRANTED

10 11. Evidence of Plaintiffs' incarceration following their convictions in the criminal case and
11 past periods of incarceration/detention should be excluded

12 GRANTED

13 12. Exclude the video recorded portion of Chaplin's Vice News interview

14 DENIED

15 13. Exclude Defense Expert Kenton Wong from speculating that wind, humidity, moisture
16 may have affected the deposition of gunshot particles on Thompson's White T-shirt

17 DENIED

18 14. Exclude Defense Expert Detective Paynter's statement that Officer Donald's intent was
19 to "issue [Plaintiffs] a citation and release them..."

20 GRANTED

21 15. Exclude Defense Expert Detective Paynter from testifying that "Thompson eventually
22 admitted to entering Safeway and stealing beer."

23 RESERVED

1 16. Exclude Plaintiff's expert Dr. Lacy from being questioned if it would have been
2 "possible" for Chaplin to stumble and take some steps after his T-11 was shattered

3 DENIED

4 17. Exclude Deputy Hinrichs from testifying that he believed he was responding to a
5 "robbery"

6 DENIED

7 18. Exclude exhibits where the facts contained therein are in dispute and which contain
8 hearsay statements that do not satisfy an independent exception to the hearsay rule

9 RESERVED

10 19. Exclude Chaplin's Facebook postings

11 RESERVED

12 20. Exclude duplicative testimony from experts Cheng and Wong regarding how Chaplin's
13 arm became injured

14 RESERVED

15 21. Exclude damages experts from speculating that Chaplin would not have been able to live
16 independently, irrespective of the injury sustained during the shooting incident

17 DENIED

18 22. Exclude any reference to expenses or costs incurred by other spinal injury patients or
19 costs associated with other patients' life care needs

20 DENIED

21 23. Exclude expert Thompson, a quadriplegic, from referencing his own spinal injury,
22 recovery, or condition

23 DENIED

24. Exclude evidence regarding Plaintiff Chaplin's education history, GED, plans to return to school, work history, ability or inability to work

DENIED

25. Exclude reference to Chaplin's preexisting history of childhood trauma and recurrent major depression or anxiety disorder

DENIED

26. Life care plan expert witness Thompson should be excluded from testifying that:

a. Lack of medical records for Chaplin from August 2016-August 2017 means he did not attend appointments or require medications

DENIED

b. Chaplin allowed other people to "play with his wheelchair" or that he misused his wheelchair while incarcerated

DENIED

c. Chaplin was instructed to take medications while in jail and that he "was not taking responsibility for that"

DENIED

d. Chaplin was not regularly attending scheduled medical visits

DENIED

e. Chaplin arrived at PT with a videographer

DENIED

f. Chaplin did not have the cognitive ability to live by himself regardless of injuries

DENIED

g. Chaplin did not appear to have pain and had fine motor skills

DENIED

- h. A social worker put a hold on COPES assessment for in-home care as it appeared Chaplin was not expected to need held from others while in the hospital

DENIED

27. Exclude defense expert Rosen from testifying that he “felt” Chaplin might not ever have the skills to live by himself, because he believed Chaplin relied on his mother

RESERVED

28. Exclude defense expert Rosen’s observation that Chaplin looked numerous times to his mother for guidance “as he did not understand what was being asked of him”

RESERVED

29. Exclude speculation by defense experts from testifying that “Chaplin’s mother managed his medical compliance and that she likely provided that type of support prior to the incident due to his preexisting intellectual, cognitive and behavioral issues”

RESERVED

30. Exclude speculation that because Chaplin relied on his mother that “he might not ever have the skills to live by himself”

RESERVED

Defendants’ Motions in Limine:

1. Exclude evidence of settlement discussions

GRANTED

2. Exclude reference of personal counsel for Officer Donald

DENIED

1 3. Exclude evidence of insurance

2 GRANTED

3 4. Exclude evidence of Bjornstad memo

4 GRANTED

5 5. Exclude evidence of field training records

6 DENIED

7 6. Exclude evidence of transit center death

8 GRANTED

9 7. Exclude evidence of Dr. Popeli complaint

10 GRANTED

11 8. Exclude evidence of Allen Memo

12 DENIED

13 9. Exclude claims that the jury could not decide Count I in Plaintiffs' assault case

14 DENIED

15 10. Exclude claims that the conviction on Count II was "mere apprehension"

16 GRANTED

17 11. Exclude Donald's "dreamcicle" Facebook post

18 GRANTED

19 12. Exclude claims that Donald is a racist or his actions were racially motivated

20 GRANTED

21 13. Exclude claims that Donald should have used the lowest level of force

22 DENIED

23 14. Exclude reference to protests in Olympia following shooting

24

GRANTED

15. Exclude references to Michael Brown or other notorious shootings

GRANTED

16. Exclude claims that police are more likely to use force against black males

GRANTED

17. Exclude references to Plaintiffs as “unarmed black men”

DENIED

18. Exclude claims that Plaintiffs are not guilty of the assault in Count II

DENIED

19. Exclude claims that Chaplin is not guilty of theft

GRANTED

20. Exclude evidence that Donald was terminated from city of Auburn police department

GRANTED

21. Exclude references to use of force incidents in the past when Donald used lower levels of force

DENIED with respect to evidence rebutting Donald’s assertion that he has not been successful with his taser and bean-bag shotgun, but otherwise GRANTED

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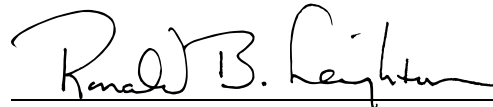
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1 In addition, all questions proposed by the parties in their jury questionnaires will be asked
2 out loud to prospective jurors in court during jury selection.

3 IT IS SO ORDERED.

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5 Dated this 9th day of September, 2019.

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8 Ronald B. Leighton
9 United States District Judge
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